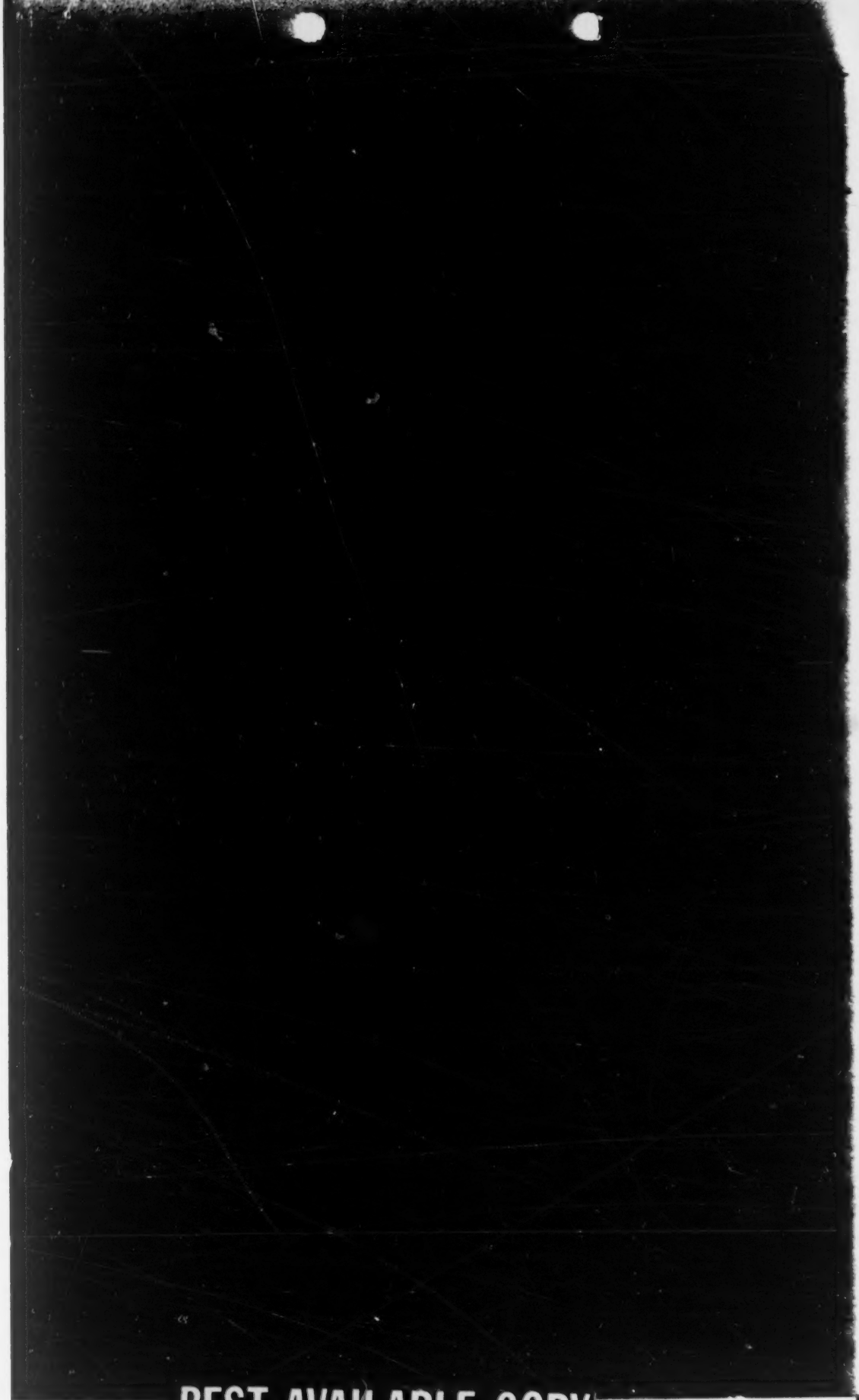
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QUESTION PRESENTED

Whether the punishment of a pretrial detainee implicates substantive due process, thus, making the doctrine of **Parratt v. Taylor** inapplicable.

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No.

In The
Supreme Court of the United States
October Term, 1988

Darrell Johnson

Petitioner

vs.

Vincent Williams-El

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Comes now Vincent Williams-El, respondent, and respectfully prays that this Court deny the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS

U.S. Const., Art. III, Section 1, Cl 2 provides in pertinent part:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original Jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

U.S. Const., Amend, XIV provides in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

In the opinion in the case at bar, the Eighth Circuit correctly held that a pretrial detainee had a liberty interest in not being assaulted by a correctional officer. In addition, that court held that deprivation of that liberty interest would implicate substantive due process.

In reaching this conclusion, the Eighth Circuit followed precedent in its own circuit as well as precedent in many other circuits. This court has also reviewed this question in **Bell**

v. **Wolfish**, 441 U.S. 520 (1979) and **United States v. Salerno**, 481 U.S. 739 (1987). Although this Court has not specifically ruled on this issue both opinions indicated that substantive due process would apply to pretrial detainees.

Given the above, the questions presented by petitioner are not important or unsettled questions of federal law, and need not be reviewed by this Court. Further, petitioner does not even have standing, pursuant to Article III of the United States Constitution, to challenge one of the issues decided by the Eighth Circuit as that Court ruled in petitioner's favor.

I.

WHETHER PETITIONER HAS STANDING TO CHALLENGE THE RULING OF THE COURT BELOW, WHICH FOUND THAT PARRATT V. TAYLOR, 451 U.S. 527 (1981) AND HUDSON V. PALMER, 468 U.S. 517 (1984) APPLY TO CASES INVOLVING A DEPRIVATION OF LIBERTY AS WELL AS A DEPRIVATION OF PROPERTY, WHEN THE COURT BELOW RULED IN PETITIONER'S FAVOR ON THIS ISSUE.

Rule 17 of the Supreme Court Rules sets out the several different (nonexclusive) reasons that the Supreme Court will look at when considering a Writ of Certiorari. One of the reasons which is considered important enough for the Supreme Court to grant review of a Writ of Certiorari is when a federal court of appeals has rendered a decision in conflict with a decision of another federal court of appeals on the same matter. See, Rule 17.1(a) of the Supreme Court Rules.

Petitioner argues, in the case at bar, that it is an unsettled question of federal law whether the **Parratt** doctrine, which involves deprivation of property, is equally applicable to cases involving a liberty interest. Petitioner also states that the circuits are split on this question. (Petition for Writ of Certiorari p. 5). While, it is true that this issue is an unsettled question of federal law and it is also true that the circuits are split on this particular question, petitioner does not have standing to bring that question before this Court. Consequently, this Court does not

have jurisdiction under Article III of the United States Constitution.

In terms of Article III, standing is characterized as:

> "whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of the federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf".

Warth v. Seldin, 422 U.S. 490, 498-499; 45 L.Ed.2d 343; 95 SCt. 2197 (1975) {emphasis in the original}.

When a plaintiff's standing is brought into issue, the relevant inquiry is whether assuming justiciability of the claim, the plaintiff has shown an injury to himself as likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Article III limitations. See, **Simon v. East Kentucky Welfare Rights Organization**, 426 U.S. 26; 48 L.Ed. 2d 450; 96 S.Ct. 1917 (1976).

In the case at bar, petitioner has not been injured by the Eighth Circuit's ruling on the **Parratt** doctrine. One of petitioner's arguments was that this case involved a deprivation of liberty and the **Parratt** doctrine should apply to liberty interests as well as property interests. The court below agreed with this argument and found that **Parratt** applies to liberty as well as property deprivations. However, the court concluded that **Parratt** did not apply in this particular case because the issue before that court was not a procedural question but was rather one of substantive due process.

Since, on this particular issue, the Eighth Circuit ruled in petitioner's favor, the petitioner does not have a personal stake in the outcome of this issue. Petitioner has not been injured, therefore, he should not be allowed to invoke the jurisdiction of this court because any review of this issue would be inconsistent with the mandates of Article III.

II.

THE QUESTION OF WHETHER THE PUNISHMENT OF PRETRIAL DETAINEES IMPLICATES SUBSTANTIVE DUE PROCESS RIGHTS, AND THUS, IS NOT SUBJECT TO THE STRICTURES OF THE PARRATT DOCTRINE, IS NOT AN UNSETTLED QUESTION OF FEDERAL LAW, AND DOES NOT NEED TO BE REVIEWED BY THIS COURT.

This Court has clearly ruled on the issue of whether substantive due process applies to pretrial detainees. In, **Bell v. Wolfish**, 441 U.S. 520; 60 L.Ed. 2d 447; 99 S.Ct. 1861 (1979), the Court stated that:

> "[U]nder the due process clause, a detainee may not be punished prior to an adjudication of guilt."

In, **United States v. Salerno**, 481 U.S. 739; 95 L.Ed. 2d 697; 107 S.Ct. 2095 (1987), this Court implied that the impermissible punishment of a pretrial detainee would be considered violative of substantive due process. In, **Salerno**, however, the Court did not rule on this question because the Court did not find a "punishment", but rather based its decision on the ruling that the federal law complained of was regulatory in nature.

Many lower courts, faced with the issue of a correctional officer's brutality towards a pretrial detainee have based their analysis directly on the due process clause. These courts have found that the pretrial detainee has a substantive right under the due process clause of the Fourteenth Amendment which protects them from "punishment" prior to an adjudication of guilt. See, **Madden v. City of Meriden**, 602 F.Supp. 1160 (D.Conn. 1985); **Johnson v. Glick**, 481 F.2d 1028 (2d. Cir. 1973), cert denied, 414 U.S. 1033 (1973); **H.C. By Hewett v. Jarrard**, 786 F.2d 1080 (11th Cir. 1986); **Schillingford v. Holmes**, 634 F.2d 263 (5th Cir. 1981).

In **Daniels v. Williams**, 474 U.S. 327; 88 L.Ed.2d 662; 106 S.Ct. 662 (1986), Justice Stevens stated in his concurring opinion, that an action would be considered violative of the substantive component of the due process law,

> "If the Federal Constitution prohibits a State from taking certain actions regardless of the fairness of the procedures used to implement them."

Id. at 338.

In the case at bar, the substantive component of the due process clause is clearly implicated. Respondent was beaten by a guard while he was a pretrial detainee. He was deprived of his liberty interest in being free from assaults by correctional officers, and no amount of procedure could legitimize that deprivation of liberty.

Petitioner wishes to characterize the "punishment" of respondent as a violation of procedural due process, and thus call the **Parratt** doctrine into play. However, prison-beating cases have long been brought under the due process clause as a violation of substantive due process. In addition, this type of case involves the deprivation of liberty that can never be corrected no matter how much "process" is given. See, **Madden v. City of Meriden**, 602 F.Supp. 1160 (D.Conn.).

Petitioner criticizes the Eighth Circuit for relying on Eighth Amendment cases in ruling on this issue. (Petition for Writ of Certiorari p. 9). This criticism is unfounded. Several courts have held that Eighth Amendment standards can be used by analogy to determine the minimum substantive rights of a pretrial detainee under the due process clause of the Fourteenth Amendment. **Rhem v. Malcolm**, 507 F.2d 333 (2d Cir. 1974); **Madden v. City of Meriden**, 602 F.Supp. 1160 (D.Conn. 1985); **Hamm v. Dekalb County**, 774 F.2d 1567 (11th Cir. 1985) cert. denied 975 U.S. 1096; 106 S.Ct. 1492; 89 L.Ed. 2d 894 (1986).

Given the above, it was perfectly proper for the Eighth Circuit to rely on Eighth Amendment cases in ruling on this issue. Therefore, the cases cited by the lower court are valuable precedent and should not be overlooked by this court. See, **Burton v. Livingston**, 791 F.2d 97 (8th Cir. 1986); **King v. Blankenship**, 636 F.2d 70 (4th Cir. 1980); and **Talley v. Stephens**, 247 F.Supp. 683 (E.D. Ark. 1965).

Finally, petitioner claims that this case is not a substantive due process case, but is rather a procedural due process case that has been mischaracterized. This allegation, however, is without merit.

As stated earlier, the "punishment" of a pretrial detainee, prior to the adjudication of guilt, implicates the substantive due process clause. See, **Bell v. Wolfish**, 441 U.S. 520; 60 L.Ed. 2d 447; 99 S.Ct. 1861 (1979). In the case at bar, no amount of "process" can remedy the deprivation of respondent's liberty interest. Therefore, this claim could not possibly be characterized as anything but a violation of substantive due process.

CONCLUSION

For the forgoing reasons, certiorari should be denied, as there are no important or unsettled questions of federal law to be reviewed by this Honorable Court.

Respectfully submitted,

By: Kevin P. Schnurbusch

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AFFIDAVIT OF SERVICE

Kevin P. Schnurbusch, being duly sworn, upon his oath states that two (2) copies of the foregoing Respondent's Brief in Opposition to the Petition for Writ of Certiorari were served this 20th day of July, 1989 by mailing same to Julian J. Bush, Associate City Counselor, City Hall, Room 314, St. Louis, Missouri 63103.

Kevin P. Schnurbusch

Kevin P. Schnurbusch #33243

Subscribed and sworn to before me this 20th day of July, 1989.

Irene A. Johnson

Notary Public

IRENE A. JOHNSON
NOTARY PUBLIC – STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXPIRES OCT. 19, 1993

My Commission Expires: